

**H.H., Appellant**

**U.S. POSTAL SERVICE, POST OFFICE,  
St. Louis, MO, Employer**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

### Case Submitted on the Record

Before:

## JURISDICTION

**ISSUE**

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On October 19, 2017 appellant, then a 59-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed right carpal tunnel and right cubital tunnel syndrome as a result of constant lifting and carrying of packages weighing up to 10 pounds, pushing and pulling tubs of mail, and sorting mail for 10 to 12 hours per day, six days per week, while in the performance of duty. He noted that he first became aware of his claimed condition, and its relationship to factors of his federal employment, on January 5, 2015. On the reverse side of the claim form the employing establishment indicated that appellant was last exposed to the conditions alleged to have caused his condition on August 14, 2017.

In a report dated March 20, 2017, Dr. Fallon Maylock, an orthopedic surgeon, examined appellant and diagnosed carpal tunnel syndrome of the right wrist and right cubital tunnel syndrome.

In a report dated March 10, 2017, received by OWCP on October 25, 2017, Dr. Siddharth Kaul, a Board-certified neurologist, indicated that he administered a nerve conduction velocity (NCV) study and an electromyogram (EMG). He advised that the NCV study showed moderate-to-severe sensory demyelinating-type neuropathy of the median nerve at the wrist, the EMG showed chronic denervation patterns in the abductor pollicis brevis consistent with median neuropathy, and that the findings were significant for the presence of right-sided carpal tunnel syndrome.

In a report dated June 22, 2017, Dr. Maylock opined that appellant's employment duties were responsible for his right carpal tunnel syndrome, and that his condition required surgery. He noted that appellant had worked in a physical job for 40 years that required repetitive lifting, pushing, pulling, and heavy physical activity.

By development letter dated October 30, 2017, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish his claim. It provided a factual questionnaire for his completion and requested additional medical evidence in support of his claim. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated January 26, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the events surrounding the claimed condition occurred as he described. It noted that he neither submitted the requested response to the questionnaire provided to him by OWCP in the October 30, 2017 development letter nor submitted medical evidence to establish that the alleged condition was causally related to employment activities.

On February 16, 2018 appellant requested reconsideration of the January 26, 2018 decision and resubmitted a copy of Dr. Maylock's June 22, 2017 report. In addition, he submitted his own narrative statement dated February 2, 2018. In this statement, appellant related that he had received medical care for his right hand condition from Dr. Maylock, who referred him to Dr. Kaul for testing. He noted that he held on to the questionnaire because he believed it was to accompany the doctor's medical findings, but Dr. Maylock had yet to comply with the requirements in the development letter. Appellant requested approval to obtain another doctor to address his medical needs.

By decision dated May 16, 2018, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant review of its January 26, 2018 decision.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under FECA section 8128(a), OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>3</sup>

A request for reconsideration must be received by OWCP within one year of the date of its decision for which review is sought.<sup>4</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>5</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In his application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and he did not advance a new and relevant legal argument not previously considered. Accordingly, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

With his reconsideration request, appellant resubmitted a copy of Dr. Maylock's June 22, 2017 report. The Board has held that material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.<sup>7</sup>

In addition, appellant submitted a supplemental statement in which he noted the doctors he had visited, and explained why he had not submitted the requested questionnaire. He also requested authorization for additional medical treatment. This evidence, while new, is not relevant to the underlying factual and medical issues in this case as it does not address appellant's employment factors or whether such factors caused the diagnosed medical conditions. Evidence which does not address the particular issue under consideration does not constitute a basis for

---

<sup>3</sup> 20 C.F.R. § 10.606(b)(3); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

<sup>6</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>7</sup> *A.M.*, Docket No. 18-1033 (issued January 8, 2019); *see* *Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

reopening a case.<sup>8</sup> Thus, appellant is also not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>8</sup> See *F.B.*, Docket No. 18-1039 (issued December 6, 2018).